GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Tribal Welfare Department – Appeal Petition filed by Sri Machala Stephen Kumar, S/o Santhoshamma, R/o Kummari Street, Yarukalapallem, Nellore District, against the proceedings No.Rc. C5 (M) 341/2018, dated 24.05.2018 of the District Collector, SPSR Nellore, under Section 7(2) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes)- Regulation of Issue of Community Certificates Act, 1993 (AP Act No.16/1993) – Appeal Petition allowed – Orders -Issued.

SOCIAL WELFARE (TW.CV.2) DEPARTMENT

G.O.Ms.No.24 Dated:08.02.2019
Read the following:

1. Proceedings of the District Collector, SPSR Nellore, Rc.C5(M) 341/2008, dated 24.05.2018.
2. Appeal Petition filed by Sri Machala Stephen Kumar through his Counsel before the Government on 02.07.2018.
3. Govt. Memo No.11021/41/CV.2/2018, dated 11.07.2018.
4. Govt. Memo No.11021/41/CV.2/2018, dated 07.08.2018.
5. From the District Collector, SPSR Nellore, Lr.Rc.C5(M)341/2008, dated 17.08.2018.
6. Govt. Memo No.11021/41/CV.2/2018, dated 17.09.2018.

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ORDER:

In the reference 1st read above, the District Collector, SSPR Nellore has issued orders cancelling ST-Yerukula caste certificates obtained from the then Mandal Revenue Officers, Bagole in the year 1998 & 2001 by Sri Machala Stephen Kumar, S/o Santhoshamma.

2. In the reference 2nd read above, Sri Machala Stephen Kumar, S/o Santhoshamma, has filed an Appeal Petition before the Government, against the Proceedings of the District Collector, SPSR Nellore. After examining the said Appeal Petition, Government have admitted the Appeal Petition and called for the parawise remarks and connected records from the District Collector, SPSR Nellore in the reference 3rd read above.

3. In the reference 5th read above, the District Collector, SPSR Nellore has furnished the Parawise remarks and the connected records on the Appeal Petition filed by Sri Machala Stephen Kumar, S/o Santhoshamma.

4. The said Appeal Petition has been posted for hearing on 18.08.2018 & 06.10.2018 and the same has been informed to the Appellant and the Counsel for the Appellant in the reference 4th & 6th read above, and they were requested to attend for the hearing along with all Documentary Evidences/ Certificates in support of the community claim, failing which, it will be construed that there is no explanation what-so-ever to furnish in the matter and that the case will be decided based on the material available with the Government. Further, the Appellate Authority has conducted final hearing in the said appeal petition on 06.10.2018 and the appellant/ the Counsel for the appellant were attended for the hearing and argued the case on said hearing schedule.

5. After hearing both the sides and on perusal of the records/ the copies of evidences/academic record/ grounds filed by the Appellant/ the parawise remarks submitted by the District Collector, SPSR Nellore and proceedings of the District Collector, SPSR Nellore, dated 24.05.2018, the Appellate Authority is observed that :

I. The appellant in his grounds has stated that his mother Smt. Nalabai Santhoshamma belongs to ST-Yerukula Community and his father Sri Philip belongs to Scheduled Caste (Mala) and their marriage was performed in the year 1968 with the consent of both sides' community elders and he was brought up under the tribal culture and following the tribal customs in his social life. Further he has stated that his mother Smt. Nalabai Santhoshamma had joined him in the school and the school authorities have recorded his mother's name as guardian and the appellant caste was recorded as Scheduled Tribe Yerukula Caste, accordingly the appellant had completed his entire studies under the guardianship of his mother.

[Contd..on P.2]

II. He is further stated that Collector failed to observe that none of the DLSC members examined are made any proper enquiry regarding the rituals, customs, death ceremonies etc., being performed by the appellant and other family members to conclude whether the appellant was accepted and assimilated by the ST Community people and also failed to observe that other family members of the appellant were accepted and assimilated in the ST community and the family was treated to be Scheduled Tribe for the last 5 decades and passed erroneous orders cancelling the caste certificate of the appellant.

III. The District Level Scrutiny Committee has observed that the DLSC had examined the school records produced by the individual. But, the school records cannot be relied upon as the School Certificates (TCs) were issued without due enquiry of the caste status. There is no mechanism/procedure prescribed for verification of caste status at the time of admission into educational institutions and there is every possibility to enter Scheduled Tribes status by certain parents with a malafide intention of claiming Scheduled Tribe status. The record *was* made on mere declaration of his parents at the time of admission into school. The parents of the individuals have got recorded the caste of the individuals as Yerukula (ST) as their mother belongs to Yerukula (ST). Hence, the educational record, i.e., T.C is not authentic and can't be relied upon. The DLSC had examined the anthropological and ethnological details of the individual, the marriages of his parents and his siblings were performed as per the customs and traditions of Christianity with the people belonging to Scheduled Caste, except his mother. Further, the appellant has not produced any relevant documents in support of his ST-Yerukula community claim. Based on the findings of the DLSC, the District Collector has cancelled the appellant's ST-Yerukula caste certificate.

IV. Under section 6 of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act 1993 (AP Act No.16/1993) the burden of proof lies on the Appellant only.

V. The Appellate Authority is observed that during the course of arguments, the appellant submitted written arguments and also stated that he belongs to Yerukala community as his mother belongs to Yerukala caste which is described as ST and his father belongs to SC- Mala and their marriage was performed in the year 1968 with consent of both side community elders and he brought up in the tribal culture and his mother joined him in the school where in it recorded his mother's name as guardian and he completed entire studies as ST and as such he able to discharges he burden of his caste clime and prays to set-aside the order of lower authority. On verification of the arguments and the documents and the grounds of appeal and Para wise remarks as well as the other documents and material available on the record it is noticed that the documents pertaining to the appellant with regard to his caste indicates that admittedly his mother belongs to ST and whereas father belongs to SC and the marriage of his parents was accepted by both communities and on that the inference could be drawn that the tribal community accepted the children out of the wedlock and further noticed the appellant also having cordial relationship with maternal side which also one of the accept that the appellant accepted by the tribal society and further noticed the appellant is in the fold of tribal society and brought up as tribe.

VI. Further, it is observed that in Circular Memo. No.10956/CV1/97-2, dt.16.2.1998 instructions were issued by the Government for issuance of Caste Certificates. As per the said instructions general instructions for claiming Community Certificates are as follows:

General Instructions :- (Applicable in all cases)
Where a person claims to belong to Scheduled Caste or Scheduled Tribe by birth it should be verified:-

i. that the person and the parents actually belong to the community claimed;
ii. that this community is included in the Constitution (Scheduled Castes and Scheduled Tribes) Order, 1950 as amended in 1976, which specified the Scheduled Castes or Scheduled Tribes in relation to the State of Andhra Pradesh;
iii. that the person belongs to the State of Andhra Pradesh and the area within the State in respect of which the community has been Scheduled;

[Contd..on P.3]

V. Status of the Off-spring of a couple where one of the spouses is a member of Scheduled Caste and the other that of a Scheduled Tribe.

As regards the status of the off-spring whose father is a member of Scheduled Caste and mother of a Schedule Tribe, the prima-facie presumption is in favour of the child possessing the caste of the father, in the large majority of cases, having regard to the concept of domicile explained in para IV above. Apart from this, it may also be a relevant criterion to see whether the child has been accepted and assimilated in the Scheduled Caste community to which the father belongs. The same principal will also apply to the case of an off-spring whose mother is a member of a Scheduled Caste and father of a Scheduled Tribe. However, each case has to be examined in the light of the attendant facts and circumstances.

In the case of marriage between a tribal with a non-tribal the main factor or consideration is whether the couple were accepted by the tribal society to which the tribal spouse belongs. If he or she, as the case may be, is accepted by the society then their children shall be deemed to be Scheduled Tribes. But this situation can normally happen when the husband is a member of the Scheduled Tribe. However, a circumstances may be Scheduled Tribe woman may have children from marriage with a non- Scheduled Tribe man. In that event the children may be treated as Scheduled Tribes only if the members of the Scheduled Tribe community accept them and treat them as members of their own community. As per the said instructions stated supra, in the instant case, the tribal society accepted the marriage of the mother of appellant and they having relationship with tribal community on that score alone it can be concluded that the appellant belongs ST community. That taking consideration of the above and the material available on the record that it can be concluded that the lower authority failed to observe the finding of the concerned above.

6. In view of the several reasons recorded in the paras supra, the Government, in exercise of the powers conferred under Section 7(2) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act 1993 (Act No.16 of 1993), hereby allowed the Appeal Petition filed by Sri Machala Stephen Kumar, S/o Santhoshamma, by upholding his Scheduled Tribe (Yerukula) community claim & ST-Yerukula caste certificate issued by the then Mandal Revenue Officers, Bagole and the Proceedings of the District Collector, SPSR Nellore issued in the reference 1st read above are set- aside.

7. The District Collector, SPSR Nellore is directed to take necessary consequential action in the matter.

8. The records (containing D.Dis.C5 (M)341/2018, pages CF: 1 to 675) received from the District Collector, SPSR Nellore through the reference 5th read above, are returned herewith in original to the District Collector, SPSR Nellore and he is requested to acknowledge the receipt of the same, immediately.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

R.P. SISODIA
PRINCIPAL SECRETARY TO GOVERNMENT

To
The District Collector, SPSR Nellore.
(with original records) (BY RPAD)

Sri Machala Stephen Kumar, S/o Santhoshamma,
R/o Kummari Street, Yarukalapallem,
Bitaragunta village,
Bagole Mandal, SPSR Nellore District.

Sri P. Raja Rao, Advocate,
D.No.7-17-87, Srinagar Main Road, Guntur District.

Copy to:

The Director of Tribal Welfare, AP, Vijayawada.
The PS to M(TWE&HFW).
The PS to Principal Secretary.(TW).

// FORWARDED:: BY ORDER //

SECTION OFFICER